IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 10TH JULY 2007 / 19TH ASHADHA 1929

WP(C).No. 21149 of 2007(P)

C.M.P.1717/07 IN CC.NO.29/00 OF J.M.F.C, AMBALAPUZHA

PETITIONER:

N.S.JAYAKUMAR, AGED 45 YEARS,
S/O. NAGARAJ SHENOY,
RESIDING AT J.P.MADOM,
AMBALAPUZHA VILLAGE, AMBALAPUZHA.

BY ADV. SRI.V.SANTHARAM
SRI.ANTO THOMAS

RESPONDENTS:
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1. STATE OF KERALA REPRESENTED BY
SUB INSPECTOR OF POLICE,AMBALAPUZHA POLICE STATION

2. PREMKUMAR, S/O.PADMANABHA SHENAI,
THOTTUNGARA MADATHIL,
KOMANA MURI, AMBALAPUZHA PANCHAYAT WARD-11,
AMBALAPUZHA VILLAGE.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

R.BASANT, J.

W.P.C.No.21149 of 2007

Dated this the 10th day of July 2007

J U D G M E N T

The petitioner is the defacto complainant/aggrieved in a prosecution for offences punishable inter alia under Section 406 I.P.C. Cognizance was taken on the basis of the final report submitted by the police. Cognizance was taken as early as in 2000, as can be seen from a number of cases registered as C.C.No.29/2000. The crime was registered in 1999. The matter dragged on and finally it has reached the fag end of the trial now. 313 examination is over. The stage of defence evidence is also over. When the matter stood posted for hearing and disposal, the petitioner filed an application under Section 173(8) Cr.P.C. The short request made by him was to direct the investigating officer to conduct a further investigation to ascertain the authorship of certain writings in the day book. The learned Magistrate, in the impugned order, took the view that the application hopelessly belated and no directions under Section 173(8) Cr.P.C can be issued at this eleventh hour.

2. The learned counsel for the petitioner submits that the accused was himself responsible for the substantial delay in disposal of the case. At any rate, the petitioner herein was in no way responsible for such delay. In these circumstances, the learned counsel for the petitioner submits that it would be a traversity of justice not to grant the prayer for further investigation on the ground of delay. It is, in these circumstances, prayed that the impugned order may be set aside and directions may be issued under Section 173(8) cr.P.C.

3. I have been taken through all the relevant documents. Exts.P1 to P5 have been read over to me. Having considered all the relevant circumstances, I am of the opinion that the conclusion of the learned Magistrate in Ext.P5 that the application of the petitioner is belated and the power to direct further investigation under Section 173(8) Cr.P.C at the instance of the defacto complainant or suo motu cannot and need not be invoked at this belated hour is eminently fair, reasonable and just and does not, at any rate, justify invocation of the extraordinary inherent jurisdiction under Section 482 Cr.P.C. In coming to this conclusion, I have taken note of the sequence of

events and the long gap of time between the date on which cognizance has been taken the date of this application for further investigation. At any rate, in not directing further investigation to be conducted suo motu or at the instance of the petitioner, the learned Magistrate has not committed any error which justifies correction by invoking the jurisdiction under Section 482 Cr.P.C.

4. This petition is, in these circumstances, dismissed. Needless to say, the dismissal of this writ petition will not in any way affect the rights of the prosecution/defacto complainant to urge before the learned Magistrate that even without the evidence of such expert, the case against the petitioner has been established satisfactorily on the basis of the materials presently available.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007